

WITNESS STATEMENT
National Park Service

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The National Park Service holds state appropriative and inchoate implied federal reserved water rights for the benefit of Great Basin National Park. These water rights are summarized below.

State Appropriative Rights

Cave Springs: Application No. 20794; Certificate No. 7573 (Attachment No. 1)

Source: Cave Springs

Amount: 0.15 cfs year-round diversion, not to exceed 109.5 acre feet per year

Priority Date: 1890 (1934 Decree, pp. 1, 27-30; Attachment No. 2)

Purpose: Recreation, Fire Protection, Domestic

Type: State appropriative right (acquired by purchase of land from White Pine County, Sept. 18, 1934) (Attachment No. 3)

Point of Diversion: SW ¼ NE ¼, Section 9, T13N, R69E, M.D.B. & M.

Note: This certificate changes the point of diversion, manner and place of use of Proof 01065 under the Baker-Lehman Creek Decree; hence, the priority and duty are as decreed.

Baker and Lehman Creeks:

Source: Baker and Lehman Creeks

Amount: 0.38 cfs (summer), 0.13 (winter)

Priority Date: 1904 (1934 Decree, pp. 1, 27-30; Attachment No. 2)

Purpose: Irrigation

Type: State appropriative right (acquired by purchase from United Securities Corp. in 1945) (Attachment No. 4)

Location: NE ¼ NW ¼ and SE ¼ NW ¼, Section 9, T 13 N, R 70 W, M.D.B. & M.

Inchoate Implied Federal Reserved Water Rights

By virtue of a line of U.S. Supreme Court cases, upon reservation of federal lands for a specific purpose an implied federal reserved water right is created of sufficient amount to fulfill the purpose of the reservation. Below is a summary of the reservations of land from the public domain leading up to the creation of Great Basin National Park.

Creation of Nevada National Forest

Origin: Proclamation No. 839 (Attachment No. 5)

Date: February 10, 1909

Purpose: To secure favorable conditions for water flows and to furnish a continuous supply of timber

Amount: The minimum amount needed to effect the purposes of the reservation

Area: Lands originally located within Nevada National Forest, as set forth in Proclamation No. 839, that were later included within Lehman Caves National Monument or Great Basin National Park

Creation of Lehman Caves National Monument

Origin: Proclamation No. 1618 (Attachment No. 6)

Date: January 24, 1922

Purpose: As stated in Proclamation No. 1618:

Whereas, certain natural caves, known as the Lehman Caves, which are situated...within the Nevada National Forest..., are of unusual scientific interest and importance, and it appears that the public interests will be promoted by reserving these caves with as much land as may be necessary for the proper protection thereof, as a National Monument.

Proclamation 1618 also states that it is "not intended to prevent the use of the lands for National Forest purposes," and that "the two reservations shall both be effective on the land withdrawn[.]" The Colorado Supreme Court addressed a similar situation involving multiple withdrawals in *United States v. City and County of Denver*, 656 P.2d 1 (Colo. 1982). In that case, lands were withdrawn initially for national forest purposes, and then subsequently for national park purposes. The court determined that the original purposes of timber and watershed protection continued on, and the federal reserved water right existed to effectuate the purposes of the national forest as well as the national park. 656 P.2d, at 27-31 (Attachment No. 7).

Amount: The minimum amount needed to effect the purposes of the reservation

Area: Lands originally located within Lehman Caves National Monument that were later included within Great Basin National Park

Creation of Great Basin National Park

Great Basin National Park was created by the Great Basin National Park Act of 1986, 16 U.S.C. § 410mm (Attachment No. 8). The Act expressly stated that no new federal reserved water right was intended with respect to the creation of Great Basin National Park, but also expressly stated that any express or implied reserved water rights that may

have been created by the establishment of the Lehman Caves National Monument and the Humboldt National Forest¹ would remain intact.

Baker Administrative Site

By Executive Order No. 1354 dated May 16, 1911, the East ½ of the Northwest ¼ of Section 9, T 13 N, R 70 E, was temporarily withdrawn from settlement, location, sale or entry, and was reserved "for use by the Forest Service as a ranger station for administration of the National Forest." (Attachment No. 9).

By Public Land Order 1506 dated September 11, 1957, the above-cited Executive Order was revoked to the extent that it affected the following lands: N ½ NW ¼ SE ¼ NW ¼, SE ¼ NW ¼ SE ¼ NW ¼, SW ¼ SE ¼ NW ¼, and SW ¼ SE ¼ SE ¼ NW ¼, of Section 9, T 13 N, R 70 E. These lands, totaling twenty acres, were returned to such status that allowed for the filing, with limitations, of applications under the non-mineral public land and settlement laws. (Attachment No. 10).

By Public Land Order 4493 dated July 15, 1968, the lands affected by P.L.O. 1506 were again withdrawn "in aid of programs of the Department of Agriculture." (Attachment No. 11).

By virtue of the Great Basin National Park Act of 1986, lands and waters within the boundaries of the Great Basin National Park that were administered by the U.S. Forest Service were transferred to the administration of the Department of Interior to be administered in accordance with the Great Basin National Park Act. (Attachment No. 8, Sec. 4(b)).

Summary

In summary, inchoate implied federal reserved water rights associated with the Great Basin National Park are the following:

- (1) *Nevada National Forest*
Purpose: Secure favorable conditions for water flows; to furnish a continuous supply of timber.
Priority Date: February 10, 1909.
Amount: The minimum amount needed to effect the stated purposes.

- (2) *Lehman Caves National Monument*
Purpose: To protect Lehman Caves.
Priority Date: January 24, 1922.
Amount: The minimum amount needed to effect the stated purposes.

¹ The lands were originally withdrawn to create the Nevada National Forest. The Nevada National Forest was later incorporated into the Humboldt National Forest. Public Land Order 1487; 22 F.R. 7309; Oct. 1, 1957.

- (3) *Baker Administrative Site*: For the 60 acres withdrawn by Executive Order No. 1354:
Purpose: For use by the Forest Service as a ranger station in the administration of the National Forest.
Priority Date: May 16, 1911
Amount: The minimum amount needed to effect the stated purpose.
- (4) *Baker Administrative Site*: For the 20 acres withdrawn by Public Land Order No. 4493
Purpose: In aid of programs of the Department of Agriculture
Priority Date: July 15, 1968
Amount: The minimum amount needed to effect the stated purpose

Water Rights Outstanding in Spring Valley: Basin Abstracts

NDWR maintains abstracts which list existing water rights and pending applications in each basin. The NPS reviews the NDWR abstracts in order to estimate the total amount of water committed to potential withdrawal or diversion in a given basin. In most cases, NPS will use the NDWR assigned annual duty in the NPS's estimate of a basin's committed water resources. However, in some cases NPS will research individual rights or applications and may amend the NDWR abstract in order to reflect a more accurate estimate of a basin's committed water resources. Further research and potential amendment will occur in the following circumstances:

1. An existing right or pending application is identified as "supplemental" to another, or when multiple applications appear to be supplemental (e.g. multiple applications with same owner, same filing date, same rate, same duty).
2. Applications seeking to change existing rights, or existing rights that have been changed by subsequent applications.
3. The stated NDWR duty is greater than the duty calculated by assuming continuous diversion at the stated flow rate.
4. No annual duty is stated in the NDWR abstract even though a flow rate is stated.

After research is done pursuant to the foregoing, adjustments may be made to eliminate double-counting associated with supplemental rights and changed water rights. In addition, adjustments may be made in those instances in which no duty has been assigned by the State Engineer. In such cases, a duty may be assigned by: a) assuming continuous diversion, b) based on the proposed number of irrigated acres, or c) based on the proposed number of livestock to be watered.

Through this process, NPS generated an abstract for Basin 184 using NDWR Abstract data as of April 3, 2006 (Attachment No. 12). The totals for the two abstracts are as follows (in acre-feet per year):

	NDWR Abstract		NPS Abstract	
	<u>Existing</u>	<u>Pending</u>	<u>Existing</u>	<u>Pending</u>
Total Rights	141,928	217,163	144,735	266,769
Ground Water	20,394	203,826	18,738	198,323
Springs	17,385	7,844	17,423	5,035
Surface Water	104,148	5,493	108,574	63,411

Regarding existing rights, the disparities are relatively minor, and can be attributed to elimination of double-counting and assignment of duties. Regarding pending applications, the difference between the NDWR Abstract and the NPS Abstract is more substantial, and can be attributed largely to NPS assuming continuous diversion on multiple applications for hydropower generation.

Perennial Yield

State Engineer rulings were reviewed to determine whether perennial yield in Spring Valley had been addressed; however, none were located addressing that issue.